



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

81st Ordinary Session of the African Commission on Human and Peoples' Rights

17 October – 6 November 2024, Kololi, The Gambia

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 *Obianuju and others vs the Federal Republic of Nigeria*, delivered by the ECOWAS Court of Justice on 10 July 2024.

As Commissioners are aware, the Court found Nigeria in violation of, inter alia, article 5 of the Charter, the prohibition of torture, in the disruption and dispersal of the protest action at the Lekki Toll Plaza on 20 and 21 October 2020. Specifically, the Court found the evidence before it establishes a state of fear and anxiety and psychological distress that amounts to torture, perpetrated by the disproportionate acts of the Respondent's agents.

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This judgement of torture in an extra custodial setting by an African Court echoes the recent thinking at the UN Human Rights Council. In its resolution 25/38, the Council expressed concern about the use of torture and cruel, inhuman or degrading treatment or punishment against persons exercising their freedoms of peaceful assembly, of expression and of association. Similarly, the UN Committee against Torture has repeatedly held that police brutality and excessive use of force outside the context of detention can fall within its purview.

The former UN Special Rapporteur on Torture, Professor Manfred Nowak, in 2005 and 2010 examined the extra-custodial use of force from the perspective of the absolute prohibition of torture and stated that “if the use of force is not necessary and, in the particular circumstances of the case, disproportional to the purpose achieved, it amounts to cruel or inhuman treatment”.¹ Further elaborating on the extra-custodial scope of the prohibition, Melzer, in his 2017 report concluded that a “failure to take all precautions practically possible in the planning, preparation and conduct of law enforcement operations increases the risk of unnecessary or disproportionate force being used and, in principle, breaches the State’s obligations to prevent cruel inhumane or degrading treatment of punishment”.²

Hon. Commissioners, while we welcome the judgement, we are disappointed that the court, when considering appropriate redress, did not consider imposing measures on the state to ensure non-repetition.

Hon. Commissioners, our continent continues to witness violent response to protest action by authorities. In a recent monitoring report by the Independent Police Oversight Authority of Kenya (IPOA) to the anti-finance Bill protest in Kenya, the oversight body reports that, on 26 June 2024, tear gas was thrown by police officers into a bus carrying persons, alleged to be traveling to join the protest action.³ In our opinion, this can only be described as excessive use of force. The excessive nature of the force, the inappropriate use of the equipment and assumed intention of the action could possibly and similarly be judged as torture cruel and inhumane treatment or punishment.

¹ United Nations General Assembly “Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment”, 9 February 2010, A/HRC/13/39, para 60.

² United Nations General Assembly “Extra-custodial use of force and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment”, 20 July 2017, A/72/178, para 46.

³ IPOA “Monitoring report on the policing of the protests held in various counties on diverse dates in June, July and August 2024”, 14 August 2024, page 10.

We therefore call on the CPTA to urge states to uphold their obligation to prevent torture where it occurs. We further call on the CPTA to promote the provisions on non-repetition as set out in the Commission's General Comment number 4 on the Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment. Among others, we urge the CPTA to call on states to:

- Establish effective and clear instructions to and continued training of public officials, including law-enforcement officials.
- Reviewing laws and reforming laws contributing to or allowing torture and other ill-treatment.

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