



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

75 Ordinary Session of the African Commission on Human and Peoples' Rights (2023)

ITEM 5: 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 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.

Study on the impact of law enforcement on the human rights of asylum seekers, refugees, and migrants in Africa

We commend the Commission for commissioning the study on the impact of law enforcement on the human rights of asylum seekers, refugees and

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migrants in Africa, which was subject to an expert consultation on 19 April 2023. We believe the study will contribute to existing regional and national efforts to ensure law enforcement activities and operations in Africa respect and promote fundamental rights and freedoms of these historically marginalised groups.

Xenophobic violence and policing in South Africa

As APCOF has previously raised before the African Commission, we are deeply concerned about the rise in xenophobic rhetoric and violence in South Africa, and the lack of capacity within the South African Police Service (SAPS) to detect, prevent and investigate xenophobic violence and related hate crimes, and provide equitable and discriminatory policing services to all.

We welcome progress made by South Africa in relation to the adoption of the Prevention and Combatting of Hate Crime and Hate Speech Bill, 2018. When passed into law, the Bill will, inter alia, classify xenophobic violence and related hate crimes as distinct from ordinary or general criminality, and strengthen existing efforts to ensure incidents of xenophobic violence and related hate crimes are properly investigated and prosecuted.

However, when it comes to policing responses to xenophobic violence, there are a number of critical gaps we have identified at the legislative, policy and operational levels.¹ These include:

- the lack of an overarching SAPS policy on the policing of non- nationals and on the detection and prevention of, and response to, xenophobic violence and related hate crimes;
- the profiling of non-nationals in law enforcement operations; and
- the absence of effective mechanisms, including early-warning systems, to ensure operational preparedness and coordination.

APCOF is further concerned that, despite the absence of available data that disaggregates crime statistics by national origin, recent statements by some

¹ <https://apcof.org/wp-content/uploads/policing-and-non-nationals-report.pdf>.

political leaders and SAPS operational and political leadership have sent clear messages to the public that non-nationals (and particularly undocumented migrants) are disproportionately responsible for serious crime and violence. This has the impact of exacerbating existing tensions between nationals and non-nationals.

We call on the Special Rapporteur to engage South Africa on the issue of xenophobic violence and related hate crimes and urge it comply with its Charter obligations, including obligations established by articles 1 and 2 of the Charter. In particular, we urge the Special Rapporteur to recommend that South Africa:

- adopts an overarching policy on the policing of xenophobic violence and related hate crimes;
- provide training to law enforcement officials in order to promote compliance with legislative frameworks and improve attitudes regarding non-nationals; and
- establish mechanisms and procedures to improve the prevention and detection of, and response to, xenophobic violence.

We also urge the Special Rapporteur to call on South Africa to ensure that pronouncements made by political leaders are consistent with its human rights obligations, and do not have the effect of heightening historical tensions between nationals and non-nationals.

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