



African Policing Civilian Oversight Forum

NGO observer status no. 372

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

ITEM 7: Activity Report of the Members of the Commission & Special Mechanism

Honourable Chairperson and Commissioners,

The African Policing Civilian Oversight Forum welcomes the opportunity to make this statement in response to the activity report of the Committee for the Prevention of Torture 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.

Our statement deals with three issues: (1) The need for a statutory instrument to formally establish and define the mandate and independence of South Africa's National Preventive Mechanism, in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT); (2) incidents of torture and other ill-treatment by law enforcement officials in South Africa; and (3) remote court proceedings and their potential to erode procedural safeguards that protect against torture and other ill-treatment.

African Policing Civilian Oversight Forum

Building 23B, Suite 16, Waverley Business Park, Wycroft Road, Mowbray, Cape Town, 7925

PostNet Suite 63 Private Bag x11, Mowbray, 7705

Tel: +27 21 447 2415

www.apcof.org.za

Trust no. IT1900/2012

Trustees: C Heyns, P Tlakula, T Gandidze (Chair), E van der Spuy, G Cronje (Treasurer), A Van Wyk

1. South Africa's National Preventive Mechanism

As the Chairperson of the Committee may be aware, on 3 March 2021, South Africa's National Preventive Mechanism (NPM) released its first [report](#) on the extent of compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in places of deprivation of liberty. APCOF welcomes this important development, which is the first tangible and public output of the NPM since it was operationalised shortly following South Africa's OPCAT ratification in 2019.

However, while the NPM is still in the early stages of the lengthy process of institutional building, we are concerned that more than 18 months since the NPM was launched by its coordinating body, the South African Human Rights Commission, it is yet to be formally established, and its mandate and independence defined, under its own statutory instrument.

Legal autonomy and independence are key elements to the full and effective fulfilment of the mandate of the NPM. They will, *inter alia*, allow the NPM to effectively define and regulate its affairs and operations in a comprehensive and coordinated manner, particularly in light of the broad range of places of deprivation of liberty that falls within the mandate of the NPM.

APCOF calls on the CPTA to engage South Africa on the need for legislation to define the mandate and independence of the NPM, and to recommend that the urgent prioritisation of a legislative process to give effect to treaty obligations under articles 1 and 5 of the African Charter, as interpreted by the Robben Island Guidelines.

2. Incidents of torture and other-ill-treatment by law enforcements officials

APCOF is concerned about continuing incidents of torture by law enforcement officials in South Africa. In particular, we note with concern that the Independent Police Investigative Directorate (IPID), [documented](#) 216 incidents of torture and 3820 cases of assault by law enforcement officials in 2019/2020. In its first report, the NPM also reported on alleged incidents of torture and assault by law enforcement officials, and described conditions of detention in many police custody facilities as falling short of international human rights standards, which includes freedom from ill-treatment under Article 5 of the African Charter.

APCOF urges the CPTA to remind South Africa of its obligations to develop and implement measures to prevent and combat acts of torture and other ill-treatment by law enforcement officials, including by ensuring that policing practices and conditions of detentions comply with domestic and regional human rights standards including Article 5 of the African Charter, as interpreted by the Robben Island Guidelines, and the Luanda Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa.

3. Remote judicial proceedings

APCOF is aware that in a number of African countries (including Tunisia, Algeria, and Kenya) the response to Covid-19 containment measures in terms of criminal procedures was to shift preliminary and trial proceedings to online platforms. We acknowledge the importance of ensuring a continuity of criminal procedure, particularly in terms of the right to trial without undue delay, and to avoid excessive periods of pre-trial detention, which may amount to a violation of Article 6 of the African Charter, which protects against arbitrary detention. However, APCOF is concerned about the impact of remote hearings on Article 5 of the African Charter. The physical production of a person before a judicial authority within 48 hours of their arrest, and during trial proceedings, is recognised by international law as an important safeguard against torture and other ill-treatment. Removing this requirement, and limiting this opportunity for independent judicial oversight of the treatment of persons held in custody pending or during trial is, in APCOF's view, a potential erosion of this safeguard.

APCOF calls on the CPTA to provide guidance to State Parties in accordance with its mandate under Article 45 of the African Charter on upholding and protecting Article 5 of the African Charter in the context of remote pre-trial and trial hearings under Covid-19 prevention measures.

Submitted on behalf of APCOF by:

Louise Edwards

Director of Research and Programmes

E: louise@apcof.org.za

Ph: +27214472415